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No. 82-143

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE OF THE STATE OF ILLINOIS,
Respondent,

v.

JAMES D. COLE, SR. and JAMES D. COLE, JR.,
Petitioners.

PETITIONERS' REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether the Supreme Court of the State of Illinois correctly held that the trial and conviction of the Defendants, James D. Cole, Sr. and James D. Cole, Jr., for the offense of Solicitation To Commit Murder did not violate the constitutional bar against double jeopardy.

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RESPONDENT'S BRIEF AND ARGUMENT RESTS ON CASES THAT ARE INAPPLICABLE TO THE ISSUE OF WHETHER DOUBLE JEOPARDY ATTACHES WHERE DEFENDANTS STAND ACQUITTED OF THE SAME OFFENSE.

Petitioners have no quarrel with the general principle that a mistrial does not bar subsequent retrial. Petitioners acknowledge that consistency in verdicts on several counts of an indictment is generally not required. Petitioners contend, however, that the argument and authorities posed by Respondent beg the issue.

Dunn v. *United States,* 284 U.S. 390 (1932), cited by Respondent does not apply to the case at bar. The Defendant in *Dunn* was charged with three, *separate* offenses. The jury acquitted Defendant on two of the counts in the indictment, but convicted Defendant on the third count in *one* trial.

Hamling v. *United States*, 418 U.S. 87 (1974), similarly concerned a *single* trial of the Defendants in that case. The Defendants were charged in separate counts with *separate* offenses of obscenity. The jury was unable to reach a verdict as to some of the counts, but convicted Defendants of obscenity based on other, *separate* materials. The holding of the Supreme Court in *Hamling* was that consistency of verdicts is not required, that a mistrial on some counts does not invalidate guilty verdicts rendered in the same trial on other similar, but separate offenses.

The Supreme Court for the State of Illinois has held, and Respondent has even acknowledged, that there is but one, single offense of solicitation as charged in the base at bar. The State chose to instruct the jury in separate verdict forms on two theories of committing the same offense. Defendants stood, and stand acquitted of the offense of solicitation after their first trial. Defendants were subsequently convicted of the same offense in their second trial. The bar against double jeopardy clearly applies and Defendants' conviction should be invalidated.

CONCLUSION

For the reasons stated in the Petition and in this Reply, the Supreme Court of the United States should issue a Writ of Certiorari to prevent the State of Illinois from denying Petitioners the constitutional protection against double jeopardy.

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